

REMARKS

Applicants amend claim 1, cancel claims 13 and 14, and add new claims 15 and 16 herein. Accordingly, claims 1-12, 15, and 16 are pending and under consideration. The following remarks are in response to the office action mailed August 24, 2009 (“the office action”).

Interview Summary

Applicants thank the Examiner for the personal interview with their representative, Brenda Jarrell, on October 27, 2009, to discuss the rejection under 35 U.S.C. § 103. The Examiner indicated that claim 1 would be allowable over the art of record if amended to recite approximate amounts, percentages, or proportions of each of the recited herbals. Agreement was reached to cancel claims 13 and 14.

Claim Amendments

Claim 1 has been amended to refer to relative amounts of each of the components of the claimed herbal formula. Ratios recited in claim 1 as amended find support in paragraphs [0096]-[0098] of the specification as originally filed. Paragraphs [0096]-[0098] recite amounts of the herbals that may be used in the preparation of a batch of an herbal formula. Thus, for example, the range of relative amounts of Ling-Zhi to Ku-Shen are calculated such that when the smallest amount of Ling-Zhi recited in paragraph [0096] is used (9 g), and the largest amount of Ku-Shen recited in paragraph [0097] is used in a batch preparation (27 g), then the smallest ratio of Ling-Zhi:Ku-Shen in an herbal mixture is $9 \div 27 = 0.3:1$. Likewise, if the largest amount of Ling-Zhi recited in paragraph [0096] is used (80 g), and the smallest amount of Ku-Shen recited in paragraph [0097] is used in a batch preparation (3 g), then it follows that the largest ratio of Ling-Zhi:Ku-Shen in an herbal mixture is 27:1. Relative amounts of Ling-Zhi to Gan-Cao and Ku-Shen to Gan-Cao were calculated in this manner.

Applicants have added new dependent claims 15 and 16. Claim 15 refers to ranges of ratios that reflect low amounts (e.g., 9 grams Ling-Zhi, 3 grams Ku-Shen, and 1.5 grams Gan-Cao) and high amounts (80 grams Ling-Zhi, 27 grams Ku-Shen, and 9 grams Gan-Cao) of components of herbal formulas disclosed, e.g., in paragraphs [0096] – [0098] of the specification. Claim 16 refers to relative percentages of each component disclosed in paragraph [0099] of the specification. Applicants respectfully request that the Examiner enter the newly added claims. The amendments and newly added claims contain no new matter.

Rejection under 35 U.S.C. §103

Claims 1-14 stand rejected under 35 U.S.C. § 103(a) over Liu (CN 1327805) in view of Hwange (US 6869621), Prakash (US 20040103908) and Houck (US 20030130200). Applicants respectfully disagree with the rejection, as detailed in the response to non-final office action and declaration filed on May 19, 2009. However, in order to expedite prosecution, Applicants have amended claim 1 to recite ranges of relative amounts of Ling-Zhi, Ku-Shen, and Gan-Cao present in the herbal mixture. The cited references do not disclose three-component compositions that include Ling-Zhi, Gan-Cao, and Ku-Shen, much less compositions that refer to relative proportions of each of these components. Applicants respectfully submit that the claims are patentable over the cited references and the respectfully request that the Examiner withdraw the rejection.

Conclusion

Applicants invite the Examiner to contact the undersigned, Margo H. Furman, at (617) 248-4073 with any questions pertaining to the above-identified application in order to expedite prosecution of this case. This Response is being filed with a Petition for Extension of Time and required fee. In the event that any further extensions or fees are required, please consider this a conditional petition and authorization to charge any fees to Deposit Account No. 03-1721, referencing attorney docket no. 2005577-0009.

Respectfully submitted,

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